IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE T.R.RAMACHANDRAN NAIR

THURSDAY, THE 26TH JULY 2007 / 4TH SRAVANA 1929

WP(C).No. 36513 of 2004(V)

PETITIONER:

STELLAMMA PETER, W/O.LATE
FRANCIS PETER, KARAKKATTU HOUSE,
MARARIKULAM NORTH P.O., ALAPPUZHA-688 549.

BY ADV. SRI.K.K.SATHISH

RESPONDENTS:

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1. STATE OF KERALA REPRESENTED BY THE
SECRETARY, GENERAL ADMINISTRATION (FFP.B)
DEPARTMENT, GOVERNMENT SECRETARIAT,
THIRUVANANTHAPURAM.

2. THE DISTRICT COLLECTOR,
ALAPPUZHA.

BY GOVERNMENT PLEADER, SRI.V.T.K.MOHAN

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 26/07/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONER'S EXHIBITS:

EXT. P1: COPY OF THE APPLICATION SUBMITTED BY THE PETITIONER TO THE 2ND RESPONDENT THROUGH THE TAHSILDAR OF CHERTHALA DATED 20-1-2002.

EXT. P2: COPY OF THE LETTER NO.29967/FFP. B3/2001/GAD DATED 12-4-02/6-5-02 ISSUED BY THE 1ST RESPONDENT TO THE PETITIONER.

EXT. P3: COPY OF THE LETTER NO.33945/FFP.B3/2003/GAD DATED 25-4-2003 ISSUED BY THE 1ST RESPONDENT TO THE 2ND RESPONDENT.

EXT. P4: COPY OF THE REPRESENTATION DATED 23-11-2004 SUBMITTED BY THE PETITIONER TO THE 2ND RESPONDENT.

EXT. P5: COPY OF THE PKC ISSUED BY SRI.H.K.CHAKRAPANI DATED 18-10-2004.

EXT. P6: COPY OF THE NARC ISSUED BY THE CJM COURT, ALAPPUZHA.

/TRUE COPY/

P.A. TO JUDGE

JP

T.R. Ramachandran Nair, J.

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W.P.(C).NO.36513 of 2004-V

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Dated this the 26th day of July, 2007

JUDGMENT

The petitioner is the widow of late Francis Peter who was a veteran freedom fighter who had actively participated in the general strike at Alappuzha in the year 1938 and against whom an arrest warrant was issued in case No.P.E.6/1114 M.E. It is averred that he had actively participated in the Punnapra-Vayalar Movement and an arrest warrant was issued by the Special Magistrate Court, Alappuzha in the case No.P.E.7/1122 M.E. To evade the arrest, he had gone underground for the period from Thulam 1122 to Dhanu 1123 (M.E.). The claim for pension is under the Kerala Freedom Fighters Pension Rules. Even though Ext.P1 application was submitted, that was rejected as per Ext.P2. The reason stated is that the certificates produced are not acceptable and that the District Collector has reported inability to recommend the same. The petitioner again approached the Government by a representation dated 20.3.2003. The same was forwarded by the Principal Secretary to Government, General Administration (FFP.B) Department as per communication dated 25.4. 2003 (Ext.P3) to the District Collector, Alappuzha for immediate report. Ext.P4 is the further

representation submitted by the petitioner to the District Collector, Alappuzha detailing the claims. There are various enclosures produced by the petitioner which are the Personal Knowledge Certificate issued from a prominent freedom fighter Shri H.K.Chakrapani, copy of the order of sanction of S.S.S. Pension (Central Pension) to Shri H.K. Chakrapani, true extract of the Convict Register of Central Prison, Trivandrum issued by the Superintendent in respect of the certifier Shri H.K. Chakrapani and the N.A.R.C. (Non Availability of Records Certificate) issued by the Chief Judicial Magistrate Court, Alappuzha.Learned counsel for the petitioner therefore submitted that there is no justification for denying the benefit to the petitioner. Learned counsel for the petitioner brought to my notice a judgment of this court in O.P.No.26694/2003, filed by one Shri P.K. Chellappan who was also a participant in the Punnapra – Vayalar Struggle. In the above judgment, it is recorded that the petitioner therein had produced the jail records of Shri H.K.Chakrapani and also the order granting Central Pension to Shri Chakrapani. By the above judgment, this court directed the respondents therein to reconsider the claim of the petitioner therein in accordance with law. Relying upon the above judgment, the petitioner sought for a similar direction in this case also.

2. The respondents have filed a counter affidavit. The stand taken

therein is that in Government Circular dated 31.12.1993 it was informed that the application received after 31.3.1994 will be considered only on the production of documentary evidence from official records such as copy of the arrest warrant, court/jail records clearly showing the applicants' suffering in connection with freedom struggle. It is stated that the petitioner has not produced any of the above records. It is further averred that the District Collector has reported that her application was rejected vide letter dated 20.12.2004. Therefore, the stand appears to be that only if the records including the jail records are produced, then alone the application can be considered and that the N.A.R.C. is not acceptable. According to me, the stand taken in the counter affidavit is not correct in the light of the various provisions of the scheme. The effect of circular dated 31.12.1993 is not to make the conditions more rigorous as regards the provisions of the main scheme and conditions which are not available in the original scheme, cannot be imposed by a circular issued thereafter. It is well settled that a circular cannot go against the express provisions of a statute, rule, notification, etc. Therefore, the respondents are not right in relying upon the Government Circular No.57183/FFP B1/93/GAD dated 31.12.1993 for rejecting the application. The petitioner has produced all the required certificates including the Personal Knowledge Certificate from Shri H.K.

Chakrapani. The relevant records relating to Shri Chakrapani have also been produced. Therefore, it is a case where the authorities ought to have considered the application on its merits rather than denying the benefit on mere technicalities. It is pointed out by learned counsel for the petitioner that pursuant to the directions in the judgment in Writ Petition No.26694/2003, the petitioner therein, Shri P.K. Chellappan has been sanctioned the pension as per Government Letter No.63819/FFP.B3/05/GAD dated 30.10.2006. Therefore, it is a case where the case of the petitioner has to be considered in the light of the above orders also.

3. Therefore, there will be a direction to the respondents to consider Ext.P4 and pass appropriate orders after considering the records produced along with Ext.P4, within a period of two months from the date of receipt of a copy of this judgment in accordance with the observations made above. On the basis of the orders issued, the petitioner shall be released the benefits within a further period of one month.

The writ petition is disposed of in the above terms. No costs.

(T.R. Ramachandran Nair, Judge.)